

REMARKS

Restriction Requirement

The Office Action has set forth a restriction requirement. Specifically, the Office Action has set forth the following groups of claims:

(I) claims 75-81 and 86-89, drawn to a nucleic acid molecule and a method for detecting bacteria;

(II) claims 82-85, 90, and 91, drawn to a combination of nucleic acids and methods for detecting DNA in a sample;

(III) claims 92-94, drawn to a method for amplifying bacterial DNA; and

(IV) claim 95, drawn to a method for amplifying bacterial DNA.

Applicants elect, with traverse, the claims of Group I (claims 75-81 and 86-89), drawn to a nucleic acid molecule and a method for detecting bacteria.

In addition, the Office Action requires the election of a "single nucleic acid sequence." Applicants elect, with traverse, SEQ ID NO: 2 which can be used for detecting bacteria including enterobacteria. In addition, Applicants elect sequences SEQ ID NOs: 2 and 25, as a pair, to the extent the election of a pair is provided for under M.P.E.P. § 803.04.

Applicants respectfully request reconsideration of the restriction requirement and the sequence election requirement.

Discussion of the Restriction Requirement

Since the present application is the U.S. national stage of a PCT application, the pertinent PCT articles and rules are to be consulted (see M.P.E.P. § 802). Under PCT Rule 13.2, a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. PCT Rule 13.2 defines the term "special technical features" as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art (see M.P.E.P. § 1893.03(d)).

The inventions defined by the claims of Groups I-IV are linked so as to form a single general inventive concept. In this respect, the compositions recited in the claims of Group II require the nucleic acid molecules recited in the claims of Group I. Moreover, the methods recited in the claims of Groups III and IV require the nucleic acid molecules recited in the claims of Group I. Given the special technical feature common to the claims of Groups I-IV, a search for prior art with respect to Group I, II, III, or IV would likely uncover references that would be considered by the Examiner during the examination of the other Groups. Indeed, the nature of the claims of Groups I, II, III, and IV is such that any burden

encountered in searching the Groups together would, at most, be slight (and certainly not "serious"), which dictates that all of the claims of the Groups should be considered at the same time (see M.P.E.P. § 803). Accordingly, Applicants request the withdrawal of the restriction requirement.

With regard to the election of species, Applicants elect, with traverse, SEQ ID NO: 2. However, Applicants note that, under M.P.E.P. § 803.04, as explained by Examiner Kenneth R. Horlick in Applicants' telephonic interview of November 1, 2004, Applicants may elect a primer pair of nucleic acid sequences. In which case, Applicants elect, with traverse, SEQ ID NOs: 2 and 25, as a pair.

Applicants also request the examination of SEQ ID NOs: 3, 5, 7, 13, 15, 21, 23, and 24. In this respect, M.P.E.P. § 803.04 provides that up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction (see M.P.E.P. § 803.04). SEQ ID NOs: 2, 3, 7, 13, 15, and 21 are homologous to one another and to SEQ ID NO: 2. Similarly, SEQ ID NOs: 23 and 24 are homologous to one another and to sequence SEQ ID NO: 25. Moreover, all of these sequences can be used as primer pairs and probes for the amplification and detection of bacteria, particularly enterobacteria. As such, all of these sequences encompass the same conserved region encompassing portions of the 23S rRNA and 5S rRNA genes and the transcribed spacer in between these rRNA genes common to all enterobacteria. Indeed, the nature of these sequences is such that any burden encountered in searching these sequences together would, at most, be slight (and certainly not "serious"), which dictates the consideration of these sequence at the same time (see M.P.E.P. § 803). Therefore, the election of species requirement should be withdrawn so as to allow the examination of at least SEQ ID NOs: 3, 5, 7, 13, 15, 21, 23, 24, and 25 together with SEQ ID NOs: 2.

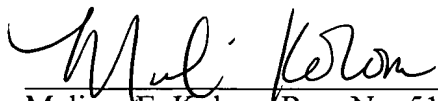
Moreover, Applicants note that, because of the existence of both a restriction requirement and an election of species requirement, the claims from the non-elected groups should be considered to the extent they have been limited for examination purposes by the election of species. Furthermore, should any of the elected claims with the elected sequences be found to be patentable, the claims from the non-elected Groups should be rejoined and considered with respect to the examined sequences.

Conclusion

For the foregoing reasons, the restriction requirement should be withdrawn in whole or at least in part. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

In re Appln. of Grabowski et al.
Application No. 10/088,966

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